HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

A.O. No. 55 of 2005

Smt. Mamta & another . Appellants

Versus

United India Insurance Co. & another Respondents

Approved for reporting.

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Not approved for reporting

Date of decision 01.11.2006.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 55 of 2005

1. Smt. Mamta w/o late Khoob Singh
2. Km. Pooja (Minor) d/o late Khoob Singh through mother Smt. Mamta, both residents of village and Post Lamakhera, Tehsil Swar, District Rampur

..... Appellants

versus

1. United India Insurance Company Limited, Branch Dehradun trough Divisional Manager, united India Insurance Co. Ltd; Divisional Officer, Haldwani
2. Gopal Krishna Narang s/o Sri Mohan Singh Narang, r/o House No. 458, Mohalla Khurbura, Dehradun

.....Respondents

Sri B.S. Parihar, Advocate for the appellants
Sri D.S. Patni, Advocate for respondent no. 1

Dated: November 1, 2006

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

Hon. Rajesh Tandon, J.

1) Heard Sri B.S. Parihar, counsel for the appellants and Sri D.S. Patni counsel for respondent no.1.

2) This appeal is against the award dated 15.12.2004, passed by the Motor Accident Claims Tribunal, Udham Singh Nagar.

3) The appellants preferred a claim petition under section 166 of the Motor Vehicles Act, for the grant of compensation on account of the death of Sri Khoob Singh in a motor vehicle accident. According to the claimants on the fateful day on 30.1.2003 the deceased was going to Kashipur from Thakurdwara by Motor Cycle No. UA 06-2712. At about 5.30

PM when they reached near Mandi Samiti Gate a truck No. UMS 8506, which was being driven rashly and negligently came from the opposite direction and hit the motor cycle. Deceased Khoob Singh sustained fatal injuries in the accident and he died instantaneously. The report of the accident was lodged on 30.1.2003 at Police Station, Kashipur. According to the claimants, the deceased was employed as cleaner on the truck of Birsa Singh. He was getting Rs.3,000/- per month as salary. He was also earning Rs.2,000/- per month by agriculture. Thus his monthly income was Rs.5,000/-. The claimants claimed rupees twenty lakhs as compensation.

4) The respondent no. 2, has filed the written statement and submitted that at the time of accident the truck was parked by the side of the road and driver of the truck has gone to ease himself. The motor cycle hit the truck from behind and as such truck driver cannot be held responsible for the accident.

5) Respondent no. 1 United India Insurance Co. has filed written statement and submitted that the claim petition is not maintainable under section 163 and 166 of the Motor Vehicles Act, and further the accident had taken place due to the negligence of motorcycle driver and the claim petition is bad for non-joinder of necessary parties.

6) The claimants examined P.W.1 Smt. Mamta and P.W.2 Virasa Singh and have filed copy of the G.D. of Police Station, Kashipur. F.I.R. and Post moretem report. Respondent no. 2 filed Insurance cover note, registration certificate of the vehicle, fitness certificate, permit and licence of the driver.

7) On the basis of the evidence on record, the Claims Tribunal has held that the accident had taken place due to the rash and negligent driving of the driver of motorcycle. The truck

was parked at the time of accident and the truck driver cannot be held guilty for the accident. The Claims Tribunal accordingly, has dismissed the claim petition.

8) The claimants have submitted in their claim petition that the accident had taken place due to rash and negligent driving by the driver of Truck No. UMS 8506, who hit the motorcycle. The petitioners in order to prove her case examined P.W.1 Mamta. She has stated in her statement that the truck hit the motorcycle. The first information report was lodged in Police Station, Kashipur on 30.1.2003, and another report was sent to the Superintendent of Police on 23.6.2003. P.W.1 Mamta has admitted in her cross-examination that she has not seen the accident and thus her statement regarding the factum of accident being based on the information received by her alone, and no conclusion can be drawn regarding the negligence on the part of the driver of the truck No. UMS 8506.

9) P.W.2 Birsa Singh has stated in his statement that the deceased was employed as cleaner on his truck and he was giving him Rs.3,000/- per month as salary.

10) We have perused the statement P.W.1 Smt. Mamta, the statement shows that her husband Khoob Singh was riding on the motorcycle along with Sri Birjoo Chauhan. Birjoo Chauhan has also sustained injuries in the accident. Thus Birjoo Chauhan is an eyewitness of the accident and he can very well depose regarding the factum of the accident. Strangely enough, Birjoo Chauhan has not been examined in this case from either of the side.

11) Motor Accident Claims Tribunals are public welfare legislation and the welfare of widows and minors should be

protected while dealing the cases of motor accidents. In the present case the claimant is a young lady of 22 years and her minor daughter of two years age. In such a prime age Smt. Mamta has become widow and her daughter lost her father. Thus their welfare should be given preference over any technicality of law.

12) Apex Court in the case **National Insurance Co. vs. Keshav Bahadur and others (2004) 2 SCC 370** has observed with regard to the procedural requirements and has referred the quotation from Halsbury's Laws of England, to the following effect:

"This classic observation has been quoted with approval by this Court in several cases. (See Commr. of Police v. Gordhandas Bhanj and S.P. Gupta v. Union of India) In Halsbury's Laws of England, 4th Edn. Vol. I, it has been observed:

"28. Duty and discretion.– * * *

A statutory discretion is not, however, necessarily or, indeed, usually absolute: It may be qualified by express and implied legal duties to comply with substantive and procedural requirements before a decision is taken whether to act and how to act. Moreover, there may be a discretion whether to exercise a power, but no discretion as to the mode of its exercise; or a duty to act when certain conditions are present, but a discretion how to act. Discretion may thus be coupled with duties."

13) Further in the case of **National Insurance Co. Ltd vs. Swaran Singh (2004) 3 SCC 297,** the Apex Court has

observed regarding the social need in accident claims. Their Lordships have observed as under:

"8. *The social need of the victim being compensated as enacted by Parliament was the subject-matter of consideration before a three-Judge Bench of this Court as early as in 1959 in British India General Insurance Co. Ltd. v. Captain Itbar Singh*[6] *wherein Sarkar, J. speaking for the Bench observed: (AIR p. 1335, para 16)*

> *"16. Again, we find the contention wholly unacceptable. The statute has no doubt created a liability in the insurer to the injured person but the statute has also expressly confined the right to avoid that liability to certain grounds specified in it. It is not for us to add to those grounds and therefore to the statute for reasons of hardship. We are furthermore not convinced that the statute causes any hardship. First, the insurer has the right, provided he has reserved it by the policy, to defend the action in the name of the assured and if he does so, all defences open to the assured can then be urged by him and there is no other defence that he claims to be entitled to urge. He can thus avoid all hardship, if any, by providing for a right to defend the action in the name of the assured and this he has full liberty to do. Secondly, if he has been made to pay something which on the contract of the policy he was not bound to pay, he can under the proviso to sub-section (3) and under sub-section (4) recover it from the assured. It was said that the assured might be a man of straw and the insurer might not be able to recover anything from him. But the answer to that is that it is the insurer's bad luck. In such*

circumstances the injured person also would not have been able to recover the damages suffered by him from the assured, the person causing the injuries."

14) In view of the above, we are of the opinion, that the interest of justice requires that an opportunity be given to the claimants to examine the eyewitness Sri Birjoo Chauhan who was driving the motorcycle at the time of accident.

15) Smt. Bhagwati has filed impleadment application before this court for arraying her as necessary party in the case. Liberty is given to her to move application for impleadment before the Claims Tribunal, within a month from the date of this order, who shall decide the same in accordance with law.

16) Accordingly, the appeal is allowed and impugned judgment and award dated 15.12.2004 is set aside. The case is remanded to the Claims Tribunal concerned, who shall decide it afresh after affording opportunity to the parties to adduce fresh evidence.

17) There will be no order as to costs.

(Rajesh Tandon, J.) **(Rajeev Gupta, C.J.)**

Dated: November 1, 2006

*Dhyani